

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3083 of 1996

AND

FIRST APPEAL No 3098 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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AHMEDABAD MUNICIPAL CORPORATION

Versus

CHOICE CONTAINER

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Appearance:

MR SK JHAVERI for Petitioner

Respondent No. 1 served by DS

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 16/09/97

ORAL COMMON JUDGEMENT

1. Admit. Despite service of notice, the respondents have not appeared and since the matters are covered by the decision of the Division of this Court, they are taken up for final hearing.

2. The appellants in both these appeals is the

Ahmedabad Municipal Corporation which is aggrieved by the judgment and order of Small Causes Court in Municipal Valuation Appeal No. 2885 of 1989 and Municipal Valuation Appeal No. 15515 of 1989. The appeals were filed by the same respondent herein, namely, Choice Container, a registered partnership firm on being aggrieved by the order dated 23rd February, 1986 and 14th September, 1989 respectively with respect to the properties bearing MC No. 672/20/20 of Ward Naroda-A for the official year 1988-1989 and 1989-1990.

3. In First Appeal No. 3083 of 1996, the learned Judge of the Small Causes Court has allowed the appeal and the Gross Rateable Value of the appeal premises fixed by the Corporation at Rs. 30,748/- for the year 1988-1989 was quashed and set aside and Municipal Tax Bill No. 3100 dated 26.12.1988 demanding Rs. 61,412/- from the appellant i.e. Choice Container was also quashed. The court also directed the Municipal Commissioner to refund the amount of Rs. 900/- to the assessee with interest at 18 per cent from the date of the deposit till the date of payment. The judgment was rendered on 23rd of January, 1991.

4. In the second First Appeal, the court partly allowed the appeal and fixed the Gross Rateable Value for the very premises at Rs.2,100/- for the official year 1989-1990 and the Bill No. 3128 dated 16th November 1989 was ordered to be deleted and fresh bill on the basis of Gross Rateable Value for Rs. 2100 for the year 1989-1990 was ordered to be issued and, if any, deposit was made by the assessee, the same was directed to be adjusted and rest of the amount was ordered to be refunded within two months from the date of the judgment failing which to pay the interest at the rate of 18 per cent for the balance amount. Such judgment was rendered on 30th November, 1990.

5. Both these First Appeals shall have to be allowed in view of the judgment of the Division Bench of this Court in the case of MUNICIPAL CORPORATION OF AHMEDABAD vs. ORIENTAL INSURANCE, reported in 1994(2) GLH 433, wherein the Hon'ble the Chief Justice B.N. Kirpal (as His Lordships then was) speaking for the Division Bench has propounded the following proposition for the purpose of fixing the Gross Rateable Value and has ultimately in para 89 of the judgment issued directions that where the premises were owned and occupied by the same persons being the owners are allowed and matters were remanded to the Small Causes Court for decision de novo for fresh fixation of the rateable value in the light of the

observations made in the said judgment.

1. In the case of self-occupied premises,  
the rateable value has to be arrived at  
by applying the principles enunciated by  
the Supreme Court in Devan Daulat Rai  
Kapoor and Dr. Balbir Singh cases and  
the decision of this Court in the case of  
Rajnikant Jeshingbhai Sheth & Ors;
2. In the case of tenanted premises for the  
period prior to 1.4.1984, applying the  
principles of Devan Daulat Rai Kapoor and  
Dr. Balbir Singh's cases, the first rent  
fixed is the standard rent and if no  
order under Section 11 of the Rent Act is  
passed, then that rent will be the annual  
letting value;
3. In the case of tenanted premises, after  
1st April 1984, in view of proviso (aa)  
to Section 2(1A)(ii), the contractual  
rent will be the annual rent;
4. Special notice under Rule 15(2) is  
mandatory and if it is not given, the  
assessment will be set aside, but the  
Small Causes Court should itself decide  
as to what should be the rateable value  
after recording necessary evidence;
5. An appeal against the assessment can only  
be filed by a person, who has filed or  
could have filed a complaint against the  
proposed rateable value i.e. appeal can  
only be filed by the owner;
6. The tenant can file an appeal only if  
notice is issued to him under Section  
140(1) or he is a tenant of land to whom  
the provisions of Section 139(2) applies.  
Tenants of constructed properties cannot  
file an appeal challenging the rateable  
value fixed;
7. An appeal cannot be filed against a bill,  
for the purpose of challenging the  
rateable value if complaint against the  
proposed fixation of rateable value had  
not been filed though opportunity been

given;

And

8. Powers of the Municipal Commissioner can  
be delegated to his subordinate Officers  
under Section 49 and Section 69 of the  
BPMC Act.

6. In view of the aforesaid settled legal position,  
these two appeals are required to be allowed and are  
hereby allowed and the judgments of the lower court are  
quashed and set aside and the matters are remanded to the  
Small Causes Court for the purpose of hearing the same  
afresh and deciding the same in accordance with the  
direction issued by the Hon'ble Division Bench of this  
Court in the case of AHMEDABAD MUNICIPAL CORPORATION  
(supra).

7. In the result, these two First Appeal succeed.  
There shall be no order as to costs.

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